

EXHIBIT C

Rough Draft of Elaine Lehnert

Houerman v. Comtech Telecommunications Corporation, et al.

November 12, 2020



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1 **Q. Do you think your opinion in the Puffenger**
2 **matter was reliable?**

3 A. Yes.

4 **Q. What would you -- how would you characterize**
5 **the methodology that you used to come to conclusions in**
6 **the Puffenger matter? In other words, how did you go**
7 **about rendering your opinion -- I'm just talking about**
8 **the form. What did you do?**

9 A. Well, I --

10 MS. GOODMAN: Object to form.

11 A. -- reviewed the documents that were provided to
12 me, which was the company's process. I believe it also
13 included the external auditor's work papers,
14 depositions, etc.

15 BY MR. CALFO:

16 **Q. So one thing you did was gather information**
17 **about the circumstances relating to Ms. Puffenger's**
18 **claims; correct?**

19 A. Yes. I reviewed the evidence that was provided
20 to me, yes.

21 **Q. And that included depositions, did you say --**

22 A. I believe it did, yes.

23 **Q. It included documents that you'd received from**
24 **the company; correct?**

25 A. Through counsel, yes.

1 **Q. And you mentioned external audit work papers**
2 **that you reviewed; correct?**

3 A. Yes.

4 **Q. Did you try to gather as much information as**
5 **you could that would help render a reliable opinion --**

6 A. Yes.

7 **Q. -- based on the facts?**

8 A. Yes.

9 **Q. Once you had those facts, what did you do?**
10 **What methodology did you use to come to the conclusions**
11 **in your expert report in Puffenger?**

12 A. So I used the COSO framework as my basis to
13 assess the internal controls and whether or not they
14 were in compliance with that framework.

15 **Q. What else did you do?**

16 A. I assessed the documentation that was provided
17 to make my determination.

18 **Q. And did you draw upon your experience in the**
19 **area of internal controls to help form your opinions?**

20 A. Well, my experience is my knowledge of COSO,
21 so -- so yes.

22 **Q. Okay. And also your application of the COSO**
23 **framework in various settings that you had been in to**
24 **provide consultation and consulting; correct?**

25 A. Yes.

1 **Q. Are there other authoritative -- is there any**
2 **other authoritative literature that you look to in**
3 **evaluating tone at the top at a company?**

4 A. I use the COSO framework.

5 **Q. Is there any other authoritative literature you**
6 **would look to?**

7 A. Me, personally? Not that I could think of.

8 **Q. Do people -- are there publications that are**
9 **put out by respected members of the accounting community**
10 **relating to how to evaluate tone at the top?**

11 A. I know that there are some -- when SOX was
12 being formulated there was a company called, I believe,
13 Protiviti, that has guidelines, and it's -- again, it's
14 not just specific to tone at the top. It's specific to
15 Sarbanes-Oxley, how you implement Sarbanes-Oxley, and
16 the components of COSO, which is a well recognized
17 standard framework that most companies in the U.S. do
18 use to evaluate their internal controls, so I believe
19 Protiviti has some guide -- guidance.

20 **Q. In trying -- have you done -- do you try to do**
21 **things to stay abreast of current thinking on issues**
22 **relating to tone at the top?**

23 A. I stay abreast of what's going on in the
24 internal control, again, arena, which is broader than
25 tone at the top. It's broader than control environment.

1 auditing world.

2 **Q. Is there any that you've found particularly**
3 **helpful that you can identify for me?**

4 A. Not off the top of my head. They're all --
5 I -- they're all informative.

6 **Q. In evaluating tone at the top does an external**
7 **auditor, you know, typically draw on his or her judgment**
8 **and experience?**

9 A. Again, the external auditor is not evaluating
10 tone at the top. That's not a criteria. Their
11 evaluation is on internal controls over financial
12 reporting. I believe there is a structure of how they
13 go about that. Their expertise in -- would play into
14 that, but they're using a structure, and they are using
15 a recognized framework, and usually it is COSO.

16 **Q. But I just -- I just want to make sure I**
17 **understand. So in this instance Deloitte was Comtech's**
18 **external auditor; right?**

19 A. Yes.

20 **Q. And are you -- is -- are you saying -- again,**
21 **this is just so I understand the way it works. You're**
22 **the expert, not me. Does -- is it not one of Deloitte's**
23 **responsibilities to evaluate tone at the top at the**
24 **company in its capacity as an external auditor?**

25 MS. GOODMAN: Object to form.

1 A. I think it depends on the facts and
2 circumstances. That's a pretty general statement.

3 **Q. Do you think there are times when it does not**
4 **involve an auditor's judgment, when they're coming to a**
5 **conclusion about whether there's an appropriate tone at**
6 **the top at a company?**

7 A. Again, it's management's assessment. That's
8 how the literature is -- it's management's assessment,
9 and they're opining on management's assessment. So I'm
10 sorry, your question was?

11 **Q. Well, I don't want to mince words. I'm sure**
12 **you don't either. But if the auditor, external auditor,**
13 **is performing an assessment of -- you know, relating to**
14 **tone at the top; correct? They're assessing**
15 **management's assessment; correct?**

16 A. Okay. And the only reason why I'm -- I don't
17 mean to push back because the assessment is over
18 internal controls over financial reporting. Tone at the
19 top is a small piece of the complete internal controls
20 over financial reporting. And that's the only reason
21 why I just want to make sure that that's clear, that
22 they're not -- the assessment isn't on tone at the top.
23 The seam is over internal controls over financial
24 reporting. I just want to make sure that's clear.

25 **Q. Explain for me what you mean by the statement**

1 **that tone at the top is a small part of what the auditor**
2 **does.**

3 A. There's a lot that they do, okay. So when
4 they're assessing control environment, tone at the top
5 is one element of COSO. And in -- in addition to that,
6 they're looking at the control activities, which is
7 another component of COSO. They're looking at
8 reporting. So I'm just saying that it's a piece of the
9 complete picture. So they're not making -- you know,
10 their assessment is over the internal controls over
11 financial reporting. That's -- that's all.

12 **Q. You used the word "small" component.**

13 A. Okay. I shouldn't -- maybe I misspoke. It's
14 an element. It is an element.

15 **Q. And it's an important element; correct?**

16 A. Absolutely, absolutely.

17 **Q. And it's one of the things they do, is they**
18 **assess management's assessment of the tone at the top;**
19 **correct?**

20 A. They -- they look at that element, yes.

21 **Q. All right.**

22 A. I would think so.

23 **Q. And when they're making that assessment, do**
24 **they use judgment, their own judgment, in coming to that**
25 **assessment?**

1 A. Again, it's a combination of documentation that
2 they're reviewing, the company's documentation, and
3 their judgment, yes. But they are looking -- it's not
4 their judgment alone. The process is that you look at
5 the documentation supporting. That's the process.

6 MR. CALFO: Cindy, did you get that entire
7 answer?

8 THE COURT REPORTER: Well, I think I should
9 read it back because she froze a couple different times.

10 THE WITNESS: Oh, I'm sorry.

11 THE COURT REPORTER: I don't know if words
12 were omitted, so let me just read the last sentence that
13 you said, that I got. I have, "The process is that you
14 look at the documentation supporting. That's the
15 process."

16 THE WITNESS: You broke up. I'm sorry. Can
17 you read that back? I can't hear you.

18 THE COURT REPORTER: (Read back.)

19 THE WITNESS: Okay. You froze. I'm sorry.

20 MR. CALFO: Well, why don't we take a quick
21 break, and maybe if we all log back on, things will get
22 better.

23 THE VIDEOGRAPHER: Okay. One second.

24 Let's -- going off record. Time now is 8:55 a.m.

25 (Recess from 8:55 a.m. to 9:08 a.m.)

1 haven't seen it.

2 **Q. Well, when you were evaluating his opinion and**
3 **suggesting it was incorrect, did you believe that his**
4 **opinion included an element that was that internal**
5 **controls are weakened if manage- -- well, excuse me.**
6 **Let me ask the question again.**

7 **When you were reviewing his report, did you**
8 **interpret him to mean that management should have the**
9 **ability to override internal controls at will?**

10 A. I'm saying that's what a management override
11 is.

12 **Q. All right. When you read Mr. Goolsby's report,**
13 **did you interpret his opinion to mean that management**
14 **can override internal controls at will?**

15 A. I don't recall him having an opinion that says
16 that.

17 **Q. So you're not -- you're not attempting to**
18 **characterize Mr. Goolsby's opinion here as one in which**
19 **management can override controls at will, are you?**

20 A. I'm not stating that, no. I'm stating that
21 internal controls are weakened if management has the
22 ability to override them at will.

23 **Q. And in the final sentence of Paragraph 13 you**
24 **say that "It is my opinion that Ms. Houser's actions**
25 **compromised the company's internal control environment**

1 **by disregarding Comtech's standards of business**
2 **conduct."**

3 **Do you see that?**

4 A. Yes.

5 **Q. All right. And is it part of your opinion in**
6 **this case that Ms. Houserman violated Comtech's**
7 **standards of business conduct?**

8 A. Yes.

9 **Q. And is it also your opinion that she violated**
10 **Comtech's policies and procedures?**

11 A. That's part of the policies and procedures,
12 yes.

13 **Q. And do you feel like you are in a position to**
14 **be able to opine on those things?**

15 A. Based on the information I received, yes.

16 **Q. And based on your experience?**

17 A. Yes.

18 **Q. Do you think your opinion that Ms. Houserman**
19 **violated Comtech policies and procedures is a reliable**
20 **opinion?**

21 A. Yes.

22 **Q. Do you think that your opinion that**
23 **Ms. Houserman disregarded Comtech's standards of**
24 **business conduct is a reliable opinion?**

25 A. Yes.

1 **this Stan agreement as I've described?**

2 MS. GOODMAN: Object to the form.

3 A. I mean, that sounds reasonable.

4 BY MR. CALFO:

5 **Q. And the parties to that agreement allegedly**
6 **were Stan Sloane, Jay Whitehurst, and Ms. Houserman.**

7 **Do you understand that?**

8 A. As you -- I don't have any belief not to belief
9 that's true.

10 **Q. And are you aware that all three of them deny**
11 **there was any such agreement to apply the reduction over**
12 **the five-year period?**

13 A. As you represent it to me, I have no reason not
14 to believe that.

15 **Q. Okay. Is it a tone at the top issue, you**
16 **think, for Mr. Kornberg to falsely allege that there was**
17 **an agreement that her pre-tax profit should be reduced**
18 **by five years when there was no such agreement?**

19 A. I don't have an opinion one way or the other.

20 **Q. Is one of the issues you look at at tone at the**
21 **top the integrity and honesty and ethics of senior**
22 **management?**

23 A. Yes.

24 **Q. An if the CEO is lying about the existence of**
25 **an agreement that would affect a president's bonus**

1 **compensation, is that a tone at the top issue?**

2 MS. GOODMAN: Object to the form.

3 A. Based on your hypothetical, if there was lying,
4 yes, that would affect the control environment, yes.

5 BY MR. CALFO:

6 **Q. Look at Paragraph 22. There's a reference to**
7 **an email that Ms. Houserman forwarded to Mr. Kornberg**
8 **that outlined the impact of the SS T-bone us pool for**
9 **2017.**

10 **Are you familiar with that email?**

11 A. Yes.

12 **Q. And in response Mr. Porcelain wrote to**
13 **Mr. Kornberg and said that it was more complicated.**

14 **Do you see that?**

15 A. Yes.

16 **Q. And what's your understanding about why it was**
17 **more complicated, as Mr. Porcelain was implying?**

18 A. I don't know --

19 MS. GOODMAN: Object to the form.

20 A. I don't have an understanding one way or the
21 other about the complication that he was implying.

22 BY MR. CALFO:

23 **Q. Are you aware of the fact that Mr. Porcelain,**
24 **who was a CFO at the time, also contended that there was**
25 **a Stan agreement that required -- or that under which**

1 **Ms. Houserman agreed to have her profit before tax**
2 **reduced for a five-year period in the amount of \$6.297**
3 **million?**

4 A. I -- as I sit here today --

5 MS. GOODMAN: Object to the form.

6 A. -- I don't recall that, but I'm assuming that
7 you're accurately assume rising your testimony -- the
8 testimony. So I have no reason to disagree.

9 BY MR. CALFO:

10 **Q. If Mr. Porcelain was falsely claiming that**
11 **there was such a five-year agreement, that a tone at the**
12 **top issue?**

13 MS. GOODMAN: Object to the form.

14 A. If he was lying, it could be, yes.

15 BY MR. CALFO:

16 **Q. How about if he failed to do adequate diligence**
17 **into whether there was such an agreement that affected**
18 **an executive's compensation? Would that be a --**

19 MS. GOODMAN: Object to the form.

20 BY MR. CALFO:

21 **Q. -- a tone at the top issue?**

22 MS. GOODMAN: Object to the form.

23 A. Can you clarify by "diligence"? I'm sorry.
24 I'm not following.

25 ///

1 BY MR. CALFO:

2 **Q. He claims there was -- if he claimed there was**
3 **such an agreement, but failed to ask the right people**
4 **about whether there was one, he failed to do due**
5 **diligence into his assertion, would that be a tone at**
6 **the top issue?**

7 MS. GOODMAN: Object to the form.

8 A. Again, I didn't do an evaluation of the --
9 that, but it -- you know, depending on the facts and
10 circumstances, it could be.

11 BY MR. CALFO:

12 **Q. Go to Paragraph 23, where you're discussing the**
13 **quarterly financial disclosure consideration checklist**
14 **that was submitted by Mr. Christensen and Ms. Houserman**
15 **on November 17, 2017.**

16 **You see that?**

17 A. I do.

18 **Q. And do you agree that the historical record**
19 **that you are basing your opinion on, that Ms. Houserman**
20 **and Mr. Christensen both stated that the general bonus**
21 **accrual calculation for Q1 contained -- included an**
22 **error?**

23 A. Yes, that's what it said.

24 **Q. And in that checklist Ms. Houserman is saying**
25 **that when corporate accounting required her to include**

1 deficiency.

2 **Q. Is upper management override a significant**
3 **deficiency?**

4 A. No, usually they're material weaknesses, in my
5 experience.

6 **Q. All right. Is every management override at**
7 **least a significant deficiency?**

8 A. I've never seen a management override that
9 wasn't at least a significant deficiency.

10 **Q. All right. And what factors go into**
11 **determining whether or not a -- some -- a deficiency is**
12 **a significant deficiency?**

13 A. So it would be whether or not the deficiency
14 should be -- rise to the level where someone who
15 oversees the financial statements should be told,
16 meaning the audit committee.

17 **Q. How does one decide that?**

18 A. So there's guidelines. There's guidance. And
19 there's interpretive guidance under the SEC. But it is
20 based on the facts of the situation and -- and judgment.

21 **Q. Is it possible that two reasonable auditors**
22 **would come to different conclusions on whether a**
23 **deficiency was a significant deficiency?**

24 MS. GOODMAN: Object to the form.

25 A. I've seen where some believe it's a material